

[Note: The on-line version of this document is best viewed with Adobe Acrobat Reader Version 4.0 or higher at the following webpage location: http://badger.state.wi.us/agencies/werc/outline_of_WACPD-WPELRA_presentation_May_2000.pdf]

Outline of Presentation to County Labor Negotiators and WPELRA
May 18, 2000 -- Green Bay Public Library

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(The speaker's remarks do not necessarily reflect the views of the WERC.)

General WERC Information (separate outline)

General WERC Update

- commission composition
- updated rules booklet
- new grievance arb request form for requesting staff, staff panel or ad hoc panel
- complaint filing fee now \$40
- Eau Claire office
- planned Wausau office
- interest arbitrator training program per 111.71(5)
- agency emphasis on decision/award timeliness guideline compliance
- publications shift from paper/diskette to CD-ROM, internet and e-mail
- e-mail mailing list for agency announcements

Focus on in-term impact bargaining (see separate outline)

- what are parties' rights and obligations regarding in-term bargaining?
- what is an impasse? how does it affect parties' rights?
- when is interest arb available to resolve in-term disputes?
- as to what subjects?

Focus on interest award trends

- outcome trends in nonconsent noneducation/nonpolice-fire (rough estimates)
 - Employer offer selected in 197 of 389 (50.6%) under previous criteria.
 - Employer offer selected in 54 of 89 (60.6%) under current criteria
 - Employer offer selected in 16 of 29 (55.2%) in 1997
 - Employer offer selected in 13 of 19 (68.5%) in 1998
 - Employer offer selected in 29 of 40 (72.5%) in 1999

- outcome trends in nonconsent police-fire awards (rough estimates)
 - Employer offer selected in 62 of 147 (42.2%) in 1971-79 awards
 - Employer offer selected in 74 of 153 (48.4%) in 1980-89 awards
 - Employer offer selected in 73 of 114 (64.0%) in 1990-96 awards
 - Employer offer selected in 10 of 18 (55.6%) in 1997 awards
 - Employer offer selected in 7 of 10 (70.0%) in 1998 awards
 - Employer offer selected in 4 of 8 (50.0%) in 1999 awards
 - fire units tend to arbitrate rarely and comparatively successfully
 - law enforcement units arbitrate more often with somewhat less success
- number and nature of issues in all interest arbitrations
 - number of issues tends to be limited to three or fewer issues
 - wages and health insurance are commonly at issue
 - no other issue is sufficiently prevalent to be statistically significant
 - consent awards are utilized in a small portion of cases
 - bargaining scope declaratory rulings are utilized in a small portion of cases
 - pre-1999 trend had been toward fewer bargains going to arbitration
- weight given to various factors in non-police-fire-education awards
 - greatest weight factor has influenced some non-education award outcomes
 - (see separate outline)
 - tendency to find mandates nonexistent or not sufficiently limiting
 - greater weight factor seems to have influenced more outcomes
 - (see separate outline)
 - local conditions more closely considered in choosing comparables
 - like employers should be compared with like employers
 - strong local economy does not assure selection of higher cost offer
 - weak local economy does not assure selection of lower cost offer
 - do local conditions warrant selection of otherwise unjustified offer
 - comparability remains a controlling factor in many outcomes
 - longstanding arbitral tendencies continue to recur (see separate outline)

Focus on WERC-related publications as research tools

- historically:
 - paper decisions/interest awards/digests
 - WASB paper digests 1975 on
 - WERC diskette decisions July89 on and quarterly subscription
 - WERC diskette grievance awards from July89 and quarterly subscription
- WERC CD-ROM decisions/gr awards July89-Dec98, word processor formats but no search software
- WisBar internet decisions and grievance awards 1989 on updated monthly (see WisBar on-line search tips)
- WERC Website with, e.g., digests, interest awards 1999 on (limited search) (more details below)
- WASB CD-ROM of state/municipal digests 1975-98 in PDF with software (highly recommended)

- WERC paper/diskette subscriptions eliminated in favor of CD-ROM, Internet and monthly e-mail subscriptions (see separate WERC publications catalog and order form)
- Interest Awards CD-ROM -- 3 disks in searchable PDF format with software --
- Update 2000 CD-R (see description in catalog) (highly recommended)
- future CD-Rs: annual update CD-Rs; searchable 71-July '89 decisions

-Demos (as time permits):

WERC Website

- URL = <http://badger.state.wi.us/agencies/werc/index.htm>
- Welcome and Contents page (hard copy provided)
- "Contents" links
- "New" links
- e-mail updates
- (limited) searching of website
- detailed contents list
- interest awards 1999 on
- ad hoc arbitrator bios
- forms in PDF and RTF (not yet interactive)
- WERC case processing manuals
- WERC digests
- selected presentation outlines including developments summaries
- links to WisBar databases

WisBar databases of WERC decisions/gr awards July 89-present

- URL = <http://www.wisbar.org/werc/index.html>
- finding by indexes
- finding by archive search (try using semicolon and "clumps" method)

WERC Interest Awards CD-ROM set

- searching by title field content (employer, arbitrator, date, winner)
- searching (hidden) text

WERC Update 2000 CD-ROM

- digests search
- decisions/awards search
- website pages "snapshot"

To order contact Georgann Kramer (608) 266-9287

For installation and use assistance, contact Marshall Gratz

An Overview of Wisconsin's Employment Relations Statutes With Emphasis on the Municipal Employment Relations Act

I. Development of Wisconsin's Labor-Management Relations Laws

- Private Sector -- WEPA precursors since mid-30's, WEPA '39
(Wisconsin Employment Peace Act, Sec. 111.01 et seq.)

- Municipal Sector -- MERA precursors since '59, MERA '71, med-arb '78, '86 amendments, '93 amendments, '95 amendments (removed interest arb sunset; made teacher QEO permanent; changed general employee interest arb criteria; authorized expanded case filing fees to fund five existing WERC professional staff positions), '97 amendments (revised teacher QEO)

 - (Municipal Employment Relations Act, Sec. 111.70 et seq.)

- State Sector -- SELRA precursors since '65, SELRA '71, coverage expanded over time to include UW program, project and teaching assistants, assistant district attorneys, and UW Hospitals and Clinics Board employees.

 - (State Employment Labor Relations Act, Sec. 111.80 et seq.)

- distinctive common elements -- contract enforcement jurisdiction, grievance arbitration, single multi-function and multi-sector agency

- effects of federal law on scope of state jurisdiction

 - limits on WEPA due to NLRA preemption

 - constitutional limits (if any) on federal public sector preemption

- context in which public sector statutes developed/exist

 - constitutions

 - due process; equal protection; separation of powers

 - freedom of association vs public sector union security

 - general powers statutes -- split public employer authority

 - taxpayer and other interest group politics replaces private profit concerns

 - civil service statutes -- procedures, rules, substantive protections

 - special wage, benefit and working condition statutes

 - uneasy overlay of legislated bilateral labor-management relationship

 - primarily-related test for MERA mandatory subjects

 - not-contrary-to-command-of-law test for MERA illegal subjects

- patchwork and change as characteristics of public sector laws

II. Key Elements of Wisconsin's Employment Relations Statutes

- statement of purpose -- interests of employees, employers, and public considered; encourage voluntary settlement through collective bargaining if employees chose

to be represented; if bargaining fails, provide fair, speedy, effective and above all peaceful procedure for settlement.

- jurisdictional parameters -- relationships to which law applies
- employee rights to engage or not in collective bargaining and other lawful concerted activities free of interference and discrimination
- private sector right to strike; public sector strikes prohibited except in very limited circumstances; penalties for strikes in violation of injunctions
- definitions of who is protected and who is regulated -- exclusions of supervisors, managerial employees and confidential employees
- "rules of the game" -- prohibiting certain practices; scope and nature of bargaining obligation -- mandatory, permissive, prohibited/illegal subjects
- complaint procedures for preventing/remedying unfair and prohibited practices
- declaratory ruling procedures for resolving scope of bargaining disputes
- bargaining unit definitions -- craft, professionals, anti-fragmentation, community of interests
- methods for selection of bargaining representative -- exclusivity and its limits; duty of fair representation
- authorization of union security agreements -- fair share, all-Union agreement
- methods for resolving bargaining impasses -- mediation, interest arb, fact-finding

III. Resultant Roles of Wisconsin Employment Relations Commission

- rule making
- adjudication
 - unfair labor practice/prohibited practice complaints (booklet available)
 - representation and referendum petitions
 - scope of bargaining and other declaratory ruling petitions
- fee setting for certain WERC services (fees list available)
- mediation of interest and grievance disputes
- gatekeeper of impasse resolution processes
- interest arbitrator/fact finder appointment -- ad hoc lists
 - also recruitment and training of interest arbitrators
- grievance arbitration -- staff, ad hoc lists
- conduct of representation elections and union security referendums
- encouragement and support of labor management cooperation activities
- public information services for groups, classes and training programs
- information gathering, reporting and publishing

IV. Basic Nature of Wisconsin Employment Relations Commission

- not DER, not ERD or LIRC of DWD, not DOL, and not WEAC.
- independent agency, 3 commissioners, 6-year terms, 1 chairperson
- professional staff -- general counsel, team leaders, in Madison and out-state
- support staff -- elections supervisor, publications sales
- headquarters office in Madison -- PO Box 7870, Madison; (608) 266-1381
 - web page located at <http://badger.state.wi.us/agencies/werc/index.htm>

OVERVIEW OF THE INTEREST ARBITRATION PROCESS
UNDER SEC. 111.70(4)(cm), STATS. AND WERC RULES CH. ERC 32

Non-supervisory police-fire contract negotiation impasses in jurisdictions of 2500 or more are subject to final offer package arbitration as provided in Sec. 111.77, Stats and WERC Rules Ch. ERC 30, which is similar to the process outlined below. However, both supervisory and non-supervisory City of Milwaukee police contract negotiation impasses are subject to a different arbitration process in Sec. 111.70(4)(jm) under which the arbitrator decides each disputed issue without being limited to selection of a party's final offer.

The Sec. 111.70(4)(cm) interest arbitration process outlined below, which was formerly called mediation-arbitration, applies to non-supervisory bargaining units of municipal employees other than law enforcement personnel and fire fighters. The interest arbitration process applies only to contract negotiation disputes regarding the terms of a new or successor agreement. Except for negotiation disputes arising under a formal agreement to reopen a subject during the term of an existing agreement, the statutory interest arbitration process is not applicable to negotiation disputes that arise during the term of an existing collective bargaining agreement.

Section 111.70(4)(cm) as revised by 1995 Wisconsin Act 27 is attached. The contract negotiation dispute resolution process that it provides can be summarized as follows:

Except where the parties have mutually agreed upon a different procedure, and until an unconditional settlement is reached, the statute provides the following steps shall be followed:

1. notice to other party and WERC of intent to commence negotiations of new or successor agreement or terms of reopener in existing agreement
2. bilateral negotiations (first meeting in public)
3. mediation by WERC member or staff member on request of either party or WERC
4. investigation by WERC member or staff member upon petition or stipulation
 - a. "preliminary final offers" submitted with petition and within 14 days after petition is received by other party
 - b. mediation or further mediation as appropriate
 - c. determination whether conditions precedent to initiation of interest arbitration have been met

[Note: there are major differences for teachers' units from this point on in the process if the school district offers a Qualified Economic Offer, see separate Differences sheet]

- d. obtain written position regarding willingness to have nonresident arbitrators on list to be supplied by WERC
 - e. execution of stipulation of unconditionally agreed upon items
 - f. exchange of final offers -- except for parties' first contracts final offers must specify a contract term of 2 years with no reopener provisions other than savings clauses, unless the parties have agreed to a different term of agreement in their stipulation of agreed items; 3 years maximum duration.
 - g. deadline set for raising objections based on alleged non-mandatory status of subjects in other side's offer and for filing petition for WERC declaratory ruling to resolve any such objection
 - h. further investigation following declaratory ruling issuance, if any
 - i. close of investigation by WERC investigator (when parties decline to further modify position with knowledge of other side's contemplated final offer; close of investigation precludes subsequent unilateral modification of offers; investigator may deem a party's latest written offer to be its final offer if the party fails to submit a final offer by the deadline set by the investigator).
5. WERC issues order initiating interest arbitration and supplies list of seven individuals from its ad hoc arbitrator list (individuals not employed by WERC and deemed by WERC to be qualified by their education and experience to serve as interest-arbitrators; only Wisconsin residents unless parties have agreed otherwise during investigation). Final offers become public documents upon the issuance of WERC order initiating med-arb, and the offers are available to the public from WERC upon request.
6. parties advise WERC of interest arbitrator selected and WERC issues order appointing the outside interest arbitrator and directs employer to post notice to public of right to petition for a public hearing before the interest arbitrator.
7. interest arbitrator conducts public meeting, if one is timely requested by 5 citizens of the jurisdiction involved. Parties state their basic positions in support of their respective final offers and then members of the public are given an opportunity to express their opinions in the matter.
8. interest arbitrator gives notice of arbitration hearing date and sets deadline for parties to mutually withdraw their final offers if they intend to do so.
- a. timely withdrawal of final offers by both sides suspends arbitration activity and permits the union to lawfully strike on 10 days written notice.
 - b. such a strike is subject to being terminated in favor of immediate resumption of arbitration if circuit court determines that the strike is harmful to the public health or safety
9. arbitration by interest arbitrator:

a. arbitrator may attempt to mediate, but only so long as both parties are willing to mediate the dispute further. Parties may change their final offer only with consent of other side. Binding consent award may be issued resolving the dispute if the parties mutually agree to that procedure.

b. arbitration involves a hearing (open to the public) at which parties present evidence and arguments as to why their respective offer is more reasonable under the Sec. 111.70(4)(cm)7 criteria:

(1) greatest weight to state law limits on employer spending or revenue

(2) greater weight to local economic conditions

(3) weight to the following other factors:

-employer's lawful authority

-parties' stipulations

-interests and welfare of public and employer's ability to pay

-"comparables" i.e., wages, hours and conditions of employment comparisons with other employees performing similar services, and with other public and private sector employees in the same or comparable communities

-cost of living

-overall compensation

-changes in the foregoing during pendency of the arbitration

-other factors normally or traditionally considered by interest arbitrators

c. after receiving written post-hearing arguments, if any, from the parties, arbitrator issues final offer package award selecting one or the other of the final offers in its entirety.

d. parties are obligated to pay half of the interest arbitrator's fees and expenses.

10. interest arbitration awards are thereafter subject to enforcement under WERC prohibited practice process and, in turn, to limited judicial review.

11. copies of awards and arbitrators' fee statements are available at nominal cost from WERC.

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A NOTE ABOUT THE POLICY OBJECTIVES OF WISCONSIN'S FINAL OFFER PACKAGE ARBITRATION PROCESS:

Wisconsin's interest arbitration process appears to have been designed to meet constitutional requirements that there be standards for arbitrators' decisions, appointment of arbitrators by a state agency, and availability of at least a limited judicial review of awards; to provide a peaceful means of dispute resolution with interest arbitration substituted for the strike in almost all cases; and to encourage voluntary settlement of disputes through bargaining, mediation, investigation, and arbitration processes.

The default system of final offer package arbitration is designed to pressure the parties to narrow or resolve their dispute on their own or through state agency mediation rather than risk a substantial set-back in arbitration. The extent to which arbitrators are prevented from achieving optimally equitable awards by the either-or limitation is considered outweighed by the increased deterrence of arbitration use and the high policy value placed on voluntary settlement of disputes.

SOME OF THE DIFFERENCES IN TEACHER UNIT BARGAINING UNDER 1993
ACT 16 AS MODIFIED BY 1995 ACT 27 AND 1997 ACT 237*

(assume old agreement expires on 6-30-97)

1. agreement must terminate 6-30-99 (coincident with State budget biennium)
2. parties may change salary schedule structure by mutual agreement
3. district must give union available information about possible qualified economic offer (QEO) on Forms A, B and C at least 60 days before expiration (or ASAP after rules were issued) or when QEO is proposed, whichever is earlier.
4. no arbitration of economic issues if district's offer amounts to a QEO
5. no arbitration of non-economic issues (and hence no overall contract settlement) unless and until parties sign a stipulation resolving all economic issues. See last clause of 6, below.
6. in general, good faith bargaining duty and the status quo rule apply to mandatory subjects including wages and fringes both before and after deadlock is declared. Exceptions: district is permitted to implement QEO wages and fringes after WERC investigator's determination of deadlock and is authorized to recoup overpayments after QEO or contract is implemented; district's obligation to meet/bargain further after deadlock declaration may depend on whether material change occurs in union position or in other circumstances surrounding the negotiations; if no agreement has been reached by April 1, 1999, (90 days before expiration of term being negotiated) the parties are deemed by operation of law to agree to economics consisting of status quo modified by QEO and any agreed upon changes in economics.
7. if district has offered a QEO, all (and only) predecessor agreement economic issue provisions must continue to be honored during contract hiatus except to the extent modified by a lawfully implemented QEO and except as the parties may otherwise agree.
8. economic issues are broadly defined as including job security provisions, limitations on layoff and subcontracting, and any subject area that could cost the district money.
9. unless the parties mutually agree otherwise, a QEO is tightly defined as offering to:
 - a. maintain fringe benefits in effect 90 days before bargaining commenced
 - b. maintain district percentage fringe contributions then in effect
 - c. (for contract periods beginning prior to July 1, 1999) provide salaries for each 12 month period (and a prorated offer for any remaining period in the contract term consisting of less than 12 months) that would, for staff in unit as of snapshot date (90 days prior to expiration), theoretically cost at least 2.1% of preceding year's total package cost less extent to which fringe benefit maintenance exceeds 1.7% of preceding year's total package cost

d. (for contract periods beginning on or after July 1, 1999) provide salaries for each 12 month period (and a prorated offer for any remaining period in the contract term consisting of less than 12 months) that would, for staff in unit as of snapshot date (90 days prior to expiration), theoretically cost at least 3.8% of preceding year's total package cost less the cost of fringe benefit maintenance

[Note: QEO costing is based on assumption that there is no year to year change in the snapshot date staff and no change in their level of service/activity (e.g., numbers of miles driven and reimbursed, numbers of summer school courses taught, etc.)]

e. allocate available salary monies in the following order:

(1) full or pro-rated portion of step for all those eligible

(2) full or pro-rated portion of educational lane movement

(3) all other salary increase monies must be paid in across the board manner that best retains existing rate relationships within the schedule (equal \$ per cell, equal % per cell, or change base and apply existing index).

*These notes are not an official interpretation of the controlling statutes and rules.

IN-TERM IMPACT BARGAINING NOTES

The MERA duty to bargain includes a duty to meet at reasonable times and places, bargain in good faith, and refrain from unilateral changes in mandatory subjects of bargaining. The impact of management decisions on mandatory subjects of bargaining is a mandatory subject of bargaining even if the underlying management decision is not. Examples of mandatory impact proposals might include: bumping and recall rights or severance pay for employees the employer decides to lay off for economic reasons; and the wage rate applicable to a new job classification within the bargaining unit that the employer decides to create.

Recognized defenses to a claim of refusal to bargain include agreement (i.e. the subject is covered by an existing collective bargaining); waiver (proven by clear bargaining history evidence or specific contract language); and necessity (example: wage increase made in good faith effort to comply with increased statutory minimum wage). The other party's unlawful abusive delay in the processing of the dispute may constitute an additional defense to a claim of refusal to bargain. See City of Brookfield, Dec. No. 19822-C (WERC, 11/84); Green County, Dec. No. 20308-B (WERC, 11/84) and Racine Schools, Dec. No. 29659-B (WERC 4/2000).

In the private sector, an additional recognized defense to a claim of unilateral change refusal to bargain arises where the parties' bargaining has reached an impasse and the change implemented is consistent with the terms last offered at the bargaining table by the party implementing the change. However, a break in the impasse, due to a material change in circumstances or bargaining positions, reinstates the duties to meet and to avoid further unilateral changes.

Under MERA, an impasse is not a defense to a claim of refusal to bargain as regards disputes subject to final and binding resolution through interest arbitration. E.g., City of Brookfield and Green County, above. However, an impasse is a recognized defense under MERA as regards disputes that are not subject to final and binding resolution through interest arbitration. Winter Schools, Dec. No. 14482-B (McGilligan, 3/77) aff'd by operation of law -C (WERC 4/77).

Except in police-fire disputes in low population jurisdictions, compellable final and binding interest arbitration is available to resolve municipal sector mandatory subject bargaining impasses about a new agreement or in bargaining pursuant to a formal reopener provision. Interest arbitration is otherwise not available to resolve impasses about subjects to be in effect during the term of an already existing collective bargaining agreement. Dane County, Dec. No. 17400 (WERC, 11/79) aff'd (CirCt Dane, Currie, J., 6/80).

The circumstances in which interest arbitration is available to resolve impasses concerning mandatory subjects relating to positions newly added to a bargaining unit has been a controversial issue over the years. Reduced to essentials, the current cases hold that if the agreement does not already establish the position's wages, hours and conditions of employment, then the duty to bargain applies and interest arbitration is available to resolve any impasse. Vernon County Dec. No. 13805-I (WERC 2/2000). If the parties' agreement already establishes the position's wages, hours and conditions of employment, the existing contract automatically applies, no duty to bargain arises, and interest arbitration is not applicable. Green Bay Schools, Dec. No. 29827 (WERC, 2/2000).

Thus, under MERA, an impasse is a valid defense to a claim of unilateral change refusal to bargain as regards at least some disputes about mandatory subjects to be in effect during the term of an existing agreement.

Whether the parties were at an impasse when a unilateral change or other refusal to bargain occurred is a fact question traditionally involving factors including bargaining history, the good faith of the parties, the length of the negotiations, the importance of the issue or issues, and the contemporaneous understanding of the parties as to the state of the negotiations. See, City of Eau Claire, Dec. no. 22795-B (WERC, 3/86). The party relying on an impasse defense is responsible for correctly determining that the parties are at an impasse when that party implements some or all of its last stated bargaining offer. (The question of whether an impasse exists could theoretically be posed to the WERC by means of a petition for declaratory ruling, but that step is neither required nor typically utilized.)

A party's right to implement a change in a non-mandatory subject of bargaining is ordinarily unaffected by the status of bargaining about the impact of that decision on mandatory subjects of bargaining. E.g., Milwaukee Schools Dec. No. 20093-A (WERC, 2/83); City of Madison, Dec. No. 17300-C (WERC, 7.83). For example, unless the agreement provides otherwise, the employer may, during the term of an existing agreement, create a new job classification within the bargaining unit, offer to bargain with the Union about the applicable wage rate for that job, and simultaneously fill the job and pay a unilaterally established rate, subject only to the right of the union to engage the employer in good faith bargaining concerning the wage rate that will apply to the job retroactive to the first day the new hire was employed. [Note: Because this example involves a classification newly added to the bargaining unit, see the discussion above regarding the availability of interest arbitration in such cases.]

-- end --

RECENT ARBITRAL COMMENTARY REGARDING GREATEST AND GREATER WEIGHT FACTORS (with emphasis on non-education cases)

THE STATUTORY CONTEXT

As set forth in Sec. 111.70(4)(cm), Wis. Stats., the current arbitral criteria applicable to non-police-fire disputes in Wisconsin are as follows:

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of the factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer..
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in

comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment.

THE GREATEST WEIGHT FACTOR

Columbia County (Highway), Dec. No. 28983-A (Schiavoni, 9/3/97) (Union):

I THE “GREATEST WEIGHT FACTOR” In this case there are no state laws or directives that limit the County ability to pay for either offer. The County makes no serious argument that it is constrained by statutory revenue limits such that there would be a serious impact with the selection of the Union’ s offer While the County does make several salient points regarding the impact of the mill rate decreasing by 4 55% m 1996 and the decrease being insufficient to offset the substantial increases in the land values, and the total mill rate increase of 20.45% over the 1992 mill rate costs, the County is not barred by statute from levying more to fund the Union’ s offer. This is because it may still increase its mill rate by \$0.655 Through usage of the property tax tool and the increase in sales tax collection resulting in \$100,000 more than received in 1995, the undersigned cannot find that there are State imposed limitations on County revenues which have any impact on the decision in this matter. This factor does not clearly favor one party or another and the case is determined by the application of the lesser factors.

Columbia County (Professional), Dec. No. 28987-A (Krinsky, 9/17/97) (Union):

The statute requires the arbitrator to give weight to the factors enumerated there. Subsection (7) identifies the “factor given greatest weight” The arbitrator “shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.” In their presentation and arguments, the parties have not identified any such law or directive which places such limitations on the County That being the case, the arbitrator does not view the “greatest weight” factor as favoring either party’ s final offer.

Eau Claire, City of (Dispatchers), Dec. No. 28982-A (Krinsky, 9/4/97) (Employer):

The arbitrator does not view the tax levy limit imposed on counties as an enactment which places limitations on the expenditures which the County may make to finance the Communications Center , or which limits the revenues which It may collect there. For this reason, the arbitrator does not view the “greatest weight” factor as favoring either party’ s position.

Forest County (Courthouse) Dec. No. 29459 (Rice, 7-12-99) (Employer):

The statutory criteria requires that the arbitrator look at the “greatest weight” factor and give consideration to any state law that places limitation on expenditures that may be made or collected by a municipal employer. Implementing the Association’s final offer would increase the Employer’s costs substantially. The Employer may have the ability to pay the cost of the Association’s final offer but it would cause financial hardship. The poor economic conditions of the Employer must be given “greater weight” by the arbitrator. The Employer has low income, high poverty levels, low property values, lack of taxable property, low education level, lack of skilled trades or manufacturing industry and higher than average unemployment rates. The Employer’s employees are being offered the same wage increase accepted by its other employees. The Employer’s final offer is fair and consistent with the settlements in Comparable Group A. The courthouse employees are compensated fairly compared to other employees in both the public and private sector in the county. The courthouse unit has experienced a low turnover and the Employer’s final offer can be justified based on the economic conditions of the Employer. As a result, the Employer’s final offer will be selected by the arbitrator to be included in the successor collective bargaining agreement.

Marathon County (Courthouse), Dec. No. 29513-A (Kessler, 8-30-99) (Union):

Greatest Weight Factor Section 111.70(4)(cm) 7. Wis. Stats. mandates that arbitrators "shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations that may be made or revenues that may be collected by a municipal employer". Levy limitations have been imposed on all counties in Wisconsin. The Wisconsin statutes provide that the operating levy of a county cannot exceed .001%, or the levy rate in 1992, whichever is greater. Marathon County has not offered evidence to show that the tax levy for the County would be in violation of the statute if the final offer of the Union was chosen. For the "greatest weight" factor to become operable, the limits must be specifically shown by the affected government unit. To rely merely on representations, without any evidence of the limit and the effect that cost of the offers, would have on the limit would require the arbitrator to do nothing more than guess. Evidence was offered showing the current Tax Levy and Equalized Valuation the comparable counties. The information submitted shows [. . . that the] tax levy of the County does not appear to be disproportionate to that of the comparable counties. The "greatest weight" factor does not act as a limitation on the arbitrator in choosing the Union offer. No evidence has been submitted which suggests that the levy limits would be exceeded if the Union offer were selected.

Marathon County (Human Services Paraprofessionals), Dec. No. 29518-A (Honeyman, 10-8-99) (Employer):

I find nothing in the record, however, to support the Employer's claim to benefit from the "greatest weight" criterion; the County has simply not made a case with respect to any specific limits being likely to be exceeded by either proposal, and the fact that the levy rate of 1992 cannot be exceeded, by itself, means little in view of the hefty increases in property value noted in the record.

Marathon County (Professionals), Dec. No. 29519-A (Torosian, 10-12-99) (Employer):

Pursuant to Section 111.70(4)(cm)7, arbitrators shall give greatest weight to ". . . limitations on expenditures that may be made or revenues that may be collected by a municipal employer." However, in this case, there is no evidence that this factor favors either offer. An examination of Employer Exhibits 84 - 86 indicates the tax levy, equalized value and the tax rate of the County and that spending has risen sharply in recent years. It does not, however, establish that the Union's proposal, if other-wise reasonable, cannot be met because of limitations on expenditures or revenues. 5/ The Arbitrator does find that the parties' offers are so far apart as to make this factor determinative.

Marathon County (Social Services Professionals), Dec. No. 29517-A (Baron, 11-3-99) (Employer):

Section 66.77(2), Wis. Stats., sets the tax levy limits at the operating levy rate in 1992. In order to control costs in the face of rising health insurance premiums, the County must be fiscally responsible and operate under tighter constraints. The County has provided a table in Exhibit 76, 1998-99 Equalized Value/Tax Rates, in which Marathon County is shown to have a tax levy of \$30,856,382, equalized value of \$4,967,829,640 and tax rate of \$6.21. It is noted that the list of seven comparables in this exhibit are not the same as the comparables in the instant case, except for Portage and Wood Counties, and therefore does not permit any meaningful analysis. Other than its argument that spending by Wisconsin counties rose 24% between 1992 and 1996, no evidence has been presented which indicates that Marathon County could not meet the costs of the Union offer. Employer Exhibits 4 and 7 indicate that the 1999 cost of the Employer health insurance offer is \$206,889 while the Union's is \$207,679, making the Union's offer higher by \$790. The total costs of the Employer's offer is \$1,509,347; the Union's is \$1,515,350, resulting in a difference of \$6,003 if the Union's offer were accepted. While this amount might push the County closer to a danger point in its limit of expenditures, nothing in this record substantiates such a hypothesis.

Oconto County (Courthouse Non-Professional), Dec. No. 29085-A (Krinsky, 1/7/98) (Union):

Neither party presented evidence or arguments to support a position that its offer should be supported based upon the "greatest weight" factor. The arbitrator is not aware of any state law or

directive of “a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer” which should be viewed as bearing on the outcome of this dispute. Therefore, it is the arbitrator’s conclusion that the “greatest weight” factor does not favor either party’s final offer, and it will not be considered further in this decision.

Shawano, City of (Electric Utility), Dec. No. 28736-A (Vernon, 5/19/97) (Union):

It is noted that in this case there is no argument from either Party or reliance on Factor ‘ I--the “greatest weight” factor. There is no applicable limitation on the expenditures of the Employer. It is, therefore, irrelevant in this case.

Waukesha County (Highway), Dec. No. 29070-A (Rice, 03/19/97) (Employer):

No state law or directive has been cited by the parties as having any relevance to the question of which of their final offers should be selected.

[also see comments below by Arbitrator Petrie in Rusk County (Highway), Dec. No. 29258-A (10/17/98)]

The Greater Weight Factor

WHAT LOCAL ECONOMIC CONDITIONS DATA IS RELEVANT?

Antigo, City of (DPW), Dec. No. 29425-A (R. U. Miller, 5-31-99) (Union):

The Municipal Employment Relations Act requires that greater weight be given to local economic conditions in selecting one of the Parties’ final offers. To the extent that adjusted gross income, when used in conjunction with other measures of community economic wealth, provides meaningful and reliable data, the Arbitrator will incorporate it in the analysis of the Parties’ offers which follows.

Omro School District (Support), Dec. No. 29313-A (Dichter, 10/3/98) (Union):

. . . merely looking at income per tax return is too small of a barometer to use for measuring economic conditions. Unemployment rates, property value and numerous other factors are all relevant to any analysis of local economic conditions.

Marathon County (Social Services Professionals), Dec. No. 29517-A (Baron, 11-3-99) (Employer):

The Union has argued that the greater weight factor clearly favors its offer since the

County is among the most healthy economies in the state. Unemployment is down, manufacturing, service, agriculture, tourist, retail and financial sectors are healthy. County property values are growing and personal income exceeds Wisconsin's average.

The College has presented testimony that the Southwest Technical College area is primarily agricultural, is economically depressed and that this has been the case for some years. The College also points out that its three sources of College revenues are (1) property taxes; (2) state aids; and (3) tuition and fees from students, and that all three of these revenue sources, which together supply 80% of the College's revenues are limited by operation of the Wisconsin statutes. In support of its contention, the College presents extensive and credible evidence that, inter alia, (1) in three of the last six years the growth in the equalized value in the College district did not reach what the College considers the required 5.5% growth factor necessary to maintain a stable financial environment to support its current programs and offerings; (2) vis-a-vis other technical colleges, Southwest has had the lowest rate of growth in equalized value among its comparable districts and has considerably more difficulty maintaining the tax base which generates the largest revenue source -- property taxes; and (3) it is the only college in the technical college system levying property taxes at the 1.50 statutory mill rate.

Southwest Technical College (Support Staff), Dec. No. 29383-A (Bilder, 1-4-99) (Employer):

The College maintains that, as a result of the financial stringencies it faces, major program reductions and cutbacks occurred in 1994-95 and to a lesser extent in 1994-95. It points out, in addition that state aid allocations have not kept up with operational cost increases statewide and that tuition and fees cannot provide a consistent source of revenue. It urges that it has already cut all of the "fat" out of its budget and that the additional costs involved in acceptance of the Union's final offer would damage its programs and put an excessive future burden on taxpayers.

The Union argues that the College has failed to show that the revenue limits prevent the College from meeting the Union's final offer and it urges that the College in fact has the ability to do so. While the Union concedes that the College and the region have had some tough economic times in the past, it argues that in the years relevant to this case the situation has improved and in recent years the College has done quite well financially. Thus, the Union presents evidence, inter alia, that in 1996-97 the College was above the statewide average in receipt of state aid; that in 1997-98, the College was above the statewide average in its ability to generate funds by tax levy; that in 1997-98 its equalized property value showed a healthy improvement; and that the College's district has in recent years showed a substantial reduction in property tax burden. The Arbitrator is persuaded by the College's evidence that it is under significant financial pressure and that, in view of the statutory limitations here relevant -- in particular, the fact that it has been levying property taxes at the maximum permissible mill rate -- its ability to meet additional costs without a possible adverse effect on its programs is questionable. While the Union may be correct that both the College's financial situation and the region's economic situations have somewhat improved in the last several years, the Arbitrator

believes that the College is reasonable in its contention that these statutory limitations, economic conditions and financial constraints remain matters for concern. While as will be indicated, the exact cost of the Union's retirement health insurance offer may be somewhat uncertain it is evident that incorporation of the Union's proposal for two additional years health insurance coverage would represent at least some significant additional continuing contingent liability which the College and taxpayers would somehow have to meet. The Union contends that the College could readjust its finances and programs so as to meet the additional costs that could result from acceptance of the Union's retirement health insurance proposal. However, in accordance with the MERA statute's mandate, the Arbitrator must take due account of these factors.

Racine School District (Nurses in Teacher unit), Dec. No. 29597-A (Grenig, 12-28-99) (Employer):

FINDINGS OF FACT B. FACTOR GIVEN GREATER WEIGHT—LOCAL ECONOMIC CONDITIONS The unemployment rate in Racine has steadily declined through 1997. The downward trend changed in May 1998 when the rate increased from a record low of 3.1 percent to 3.2 percent. The Wisconsin Department of Workforce Development has reported that there was a strong growth in the labor force during 1998. From 1996 through 1997, the per capita income grown in Racine County exceeded the rate of growth for both the State of Wisconsin and the United States. The rate of income growth was 5.5 percent higher than the statewide average—seventh highest in the state.

WHAT WEIGHT IS GIVEN TO LOCAL ECONOMIC CONDITIONS?

Columbia County (Highway), Dec. No. 28983-A (Schiavoni, 9/3/97) (Union):

II. THE “GREATER WEIGHT” FACTOR This factor is tied in with the traditional factors and does not stand alone as does the greatest weight factor, which must be considered separately and given weight above all else. The greater weight factor should be considered along with the other factors but is given greater weight. The type of data necessary to provide an informed opinion might include employment and household incomes, the ranking of the community among other similar communities and relative quality of life information. In viewing income statistics for the comparable counties, it appears that the County's per capital income is slightly above average. For 1993 through 1995, the adjusted gross income for the County is above average with only Dodge and Green Lake Counties enjoying larger increases. Sales tax revenues have also increased for the County. Given the available data provided by the Union and the County's failure to supply contradictory data, it must be concluded that the County has a fairly strong local economy such that local conditions would not favor either offer. Furthermore, the Union's offer would not unfavorably impact the local economy as being too costly.

Washington County (Highway), Dec. No. 28789-A (Krinsky, 1/2/97) (Employer):

Subparagraph (7g) is the “greater weight” factor which directs the arbitrator to “give greater weight

to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.” The Union cites unemployment statistics which show that In July, 1995 Washington County’s unemployment rate of 2.5% ranked 64th among Wisconsin’s 72 counties. The County’s rank was 64 in January, 1996 and 65 in July, 1996 The Union also cited statistics showing that between 1990 and 1995 the County’s population has grown 12 2% The County cites statistics showing that on a per capita basis It ranks third among the six comparables in property tax per capita for 1995 For 1994 the County ranks third among the six comparable counties with respect to per capita income, and the County ranked 4th among the State’s 72 counties on that measure. For 1996, the County averaged the first eight months of unemployment figures to derive an average figure of 3.1 percent, which ranks tied for 2nd highest among the six comparable counties The County argues: Washington County’s wage rates for its Highway Department rank second, or within 1 cent of second, among the wage rates paid Highway Department employees employed In comparable counties, and thus are above the third and fourth place rankings of Washington County in the factor to be accorded “greater weight.” The County has a growing population, low unemployment, high per capita income and high per capita property taxes It is clearly an area which is prospering, but these facts do not persuade the arbitrator that one final offer is preferable to the other.

Waukesha County (Highway), Dec. No. 29070-A (Rice, 03/19/97) (Employer):

Subparagraph (7)(g) is the "greater weight factor" which directs the arbitrator to give greater weight to economic conditions in the jurisdiction of the municipal employer than any of the factors specified in subparagraph (7)(r). The Employer has ,a growing population, low unemployment, high per capita income and :nigh per capita property taxes. It is clearly an area that is prospering. These facts do not persuade the arbitrator that one offer is preferable to the other.

Lincoln County (Highway), Dec. No. 29340-A (Weisberger, 9/2/98) (Union):

... Given the unambiguous and mandatory statutory language of that section, the undersigned believes that she must give “greater weight” to the data submitted in this proceeding which indicates that local economic conditions within Lincoln County are sufficiently favorable to support the Union’s final offer (in addition to the County’s final offer) even though she also believes that this statutory factor alone does not mandate selection of the Union’s final offer.”

NorthCentral VTAE District (Teachers), Dec. No. 29303-B (Engmann, 9/30/98) (Employer):

Section 111.70(4)(cm)7g, MERA As noted above, the Association argues that economic conditions are good in Marathon County and throughout Central Wisconsin generally and that, therefore, this criterion clearly supports the Association’s offer as the more reasonable. The District argues that the economic conditions of counties other than Marathon are not as good and that the District’s mill rate show no signs of good economic conditions

The Association's argument is based on the assumption that if the economic conditions are good, this favors the more expensive of the offers. This logic is flawed. Good economic conditions means that the financial situation is such that a more costly offer may be accepted, that it will not be automatically excluded because the economy can not afford it. While bad economic conditions would foreclose consideration of an expensive benefit, good economic conditions allows the analysis to continue.

In any case, the parties spend little time and argument on this criterion, and they provide little in terms of supporting documentation, I therefore find in this situation that the 'Factor given greater weight' does not foreclose the possibility of the acceptance of the Association's more expensive offer over the Board's offer.

Rusk County (Highway), Dec. No. 29258-A (Petrie, 10/17/98) (Employer):

The Greatest Weight and Greater Weight Factors In this connection, it is noted that the various statutory criteria were not originally prioritized by the Wisconsin Legislature, and arbitrators therefore normally assigned weight to them in the final offer selection process in accordance with their normal relative importance at the bargaining table. Recently, however, the statutory criteria were modified to limit such arbitral discretion in their application under two sets of circumstances.

(1) They now mandate application of the "greatest weight" upon "...any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer."

(2) They now also provide for "greater weight" to be placed upon "...economic conditions in the jurisdiction of the municipal employer" than to the remaining arbitral criteria contained in Section 111.70(4) (cm) (7r) of the Statutes.

Prior to the addition of the new criteria, an employer's ability to pay was not normally given controlling weight in the final offer selection process, in the absence of a showing that it lacked the ability to pay one of the final offers. If either or both of the above factors now apply in a particular impasse, an employer's relative ability to pay must be accorded the appropriate statutory weight.

In applying the two new criteria, it is emphasized that the specified limitations on expenditures or revenues must be present to trigger the application of the "greatest weight" criterion, but the "greater weight" criterion does not require such limitations and it can apparently be applied in at least two ways: first, by ensuring that an employer's economic conditions are fully considered in the composition of the primary intraindustry comparables; and, second, by ensuring that the economic costs of a settlement are fully considered in relationship to the "...economic conditions in the jurisdiction of the municipal employer." In other words, like employers should be compared to like

employers, and undue and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions.

As emphasized by the County and as clearly spelled-out in Employer Exhibits #15, #16 and #1a, it has been precluded by law from exceeding its 1992 mill rate, except to provide for future debt, and has thus been operating within a small fraction of its maximum levy since 1993. This mill rate freeze has limited its growth in tax revenue to increases in property values and, as clearly reflected in Employer Exhibit #17, it has experienced only a 27.08% increase in equalized value since 1992, the lowest among the primary external comparables and less than one-half the 57.61% increase experienced by Sawyer County during the same period. Despite the fact that the Employer is not alleging an inability to pay, therefore, it is clear to the undersigned that the "greatest weight" factor must be applied by the undersigned in the final offer selection process in these proceedings." Despite the Union's arguments relating to the fact that property values in Rusk County are increasing and that the County may have sufficient money to fund the additional increases sought by it, there is no direct correlation between the percentage increases in property values and proposed percentage wage increases, and inability to pay is not a prerequisite to arbitral application of the greatest weight criterion..

As also emphasized by the County, and as is particularly clear from the contents of Employer Exhibits #24 through #27, the economic conditions in Rusk County are both far from robust and compare unfavorably with the primary external comparables. In this connection, it is particularly noted that Rusk County has the lowest 1996 average adjusted gross income, taxable income, average total income. and adjusted gross income per capita among the primary comparables, it has the 7th highest dependent population and the 68th lowest family income among the 72 counties in the State of Wisconsin, and it has had the highest unemployment rate among the comparable counties in 1995, 1996 and in 1997, during which time its rate of unemployment was approximately twice as high as the average for the State of Wisconsin. Despite Union arguments that some economic figures are mixed, and citing a 1995 County increase in per capita income, 1995 and 1996 increases in per capita property values, and recent increases in recreational housing units, it is clear to the undersigned that the relative economic conditions in **Rusk** County necessitate significant weight being placed on the "greater weight" factor in the final offer selection process.

Omro School District (Support), Dec. No. 29313-A (Dichter, 10/3/98) (Union):

Only when it can be shown that this economy has plummeted while others have flourished or, at least, plummeted to a greater extent than others, will the local conditions warrant awarding less than would otherwise have been proper. I conclude from the evidence that local condition are not as the Statue requires "so poor as to prevent it from giving an otherwise appropriate increase."

Forest County (Courthouse) Dec. No. 29459 (Rice, 7-12-99) (Employer)

The state of the Employer's economy is bleak. The overall economic conditions, including high poverty level, low educational level, higher than average unemployment, lower than average income and housing values all point to the fact that local economic conditions of the Employer are substantially lower than that of the other counties in Comparable Group A. . . The Union does not offer any evidence to rebut the Employer's claim of inferior economic conditions compared to other counties in Comparable Group A. It bases its position that the Employer should provide an increase well above the average given by other counties in Comparable Group A by the fact that at no time during the course of bargaining, mediation or at the hearing did the Employer allege that it did not have the economic resources to fund the Association's final offer. The economic conditions of the Employer are far from robust and compare unfavorably with all of the other counties in Comparable Group A. It is clear to the arbitrator that the relative economic conditions of the Employer necessitate significant weight being placed on the fact that its local economic conditions are inferior to that of any other county in Comparable Group A.

Manitowoc School District (paraprofessionals), Dec. No. 29481-a (Weisberger, 5-6-99)(Employer):

. . . the greater weight factor is very relevant in this proceeding, according to the District, because Manitowoc School District taxpayers have incomes below the primary and secondary comparables' average. In addition, Manitowoc County has an unemployment rate higher than the state average in 1998 while the County's personal per capita income was below the national and state average. Thus, consideration of the local economic conditions factor favors the Employer's final offer and not the Union's final offer, according to the District. . . [The Arbitrator concludes] that data on local economic conditions in the Manitowoc School District are relevant and need to be considered in this proceeding. However, she does not believe that the data presented by the Employer justify giving this factor controlling weight. Accordingly, she will consider the "other" statutory factors while continuing to give appropriate weight to the evidence and arguments presented by the Employer relating to the factors specified in Section 111.70(4)(cm)7 and 7g.

Marathon County (Professionals), Dec. No. 29519-A (Torosian, 10-12-99) (Employer):

Greater Weight

It is undisputed that the economy of Marathon County, as measured by various indicia, is very healthy. In addressing this factor in a previous case, which is appropriate here also, the undersigned stated: "The Arbitrator recognizes the importance of the 7g criteria and the 'greater weight' it is given. However, notwithstanding same, it should be noted that a conclusion that the Employer's economic condition is strong does not automatically

mean that the higher of the two offers must be selected or, conversely, a weak economy automatically dictates a selection of the Union's final offer." Iowa County (Courthouse and Social Services), Decision No. 29393-A (2/99) After considering all of the data presented by the parties, . . . it is clear to the Arbitrator that both final offers are supported by the economic conditions of Marathon County. Therefore, other criteria must be considered to determine which of the two final offers is most reasonable.

Marathon County (Social Services Professionals), Dec. No. 29517-A (Baron, 11-3-99) (Employer):

The arbitrator accepts the mandate of giving greater weight to the economic conditions of the County in reaching a decision as to which of the two final offers is to be adopted. There is no evidence in this record that Marathon County cannot bear the additional costs if the Union's final offer is selected. The analysis must continue then with an inspection of the evidence regarding health insurance and wages vis-a-vis social workers in the agreed-upon counties comparison, other public sector employees in Marathon County, and private sector employees in Marathon County.

Southwest Technical College (Support Staff), Dec. No. 29383-A (Bilder, 1-4-99)(Employer):

. . . in the Arbitrator's opinion, the statutory limitations on the College's ability to obtain revenues, the generally not favorable economic conditions in the relevant jurisdiction, and the financial pressures to which the College is currently subject favor acceptance of the College's less costly, rather than the Union's more costly, retirement health insurance proposal.

Wausau, City of (City Hall support/technical), Dec. No. 29533-A (Torosian, 11-16-99) (Employer)

The Arbitrator recognizes the importance of the 7g. criterion and the "greater weight" it is given. However, notwithstanding same, it should be noted that a conclusion that the Employer's economic condition is strong does not automatically mean that the higher of the two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer. Here, a review of the record evidence convinces the Arbitrator that the condition of the local economy can easily support either party's final offer in that the two are very close in total package cost. The dispute, herein, is not so much over the cost of the package as it is over where to place the money: fringes or wages. This being the case, the Arbitrator is convinced that both offers are supportable by the economic condition of the local economy of the City of Wausau and, for said reason, other criteria must be considered to determine which of the two final offers is most reasonable.

Wittenberg-Birnamwood School District (Support Staff), Dec. No. 29375-A (Vernon, 4-26-99)(Union)

Given the construction of Wis. Stats. 111.70(4)(cm)7, it is appropriate for the Arbitrator to consider the first two factors (7 & 7g) at the outset. The first of these criteria is to be given the “greatest weight.” The second is to be given the “greater weight.” In addressing these two factors, the Arbitrator draws guidance from the following comments by Arbitrator Petrie from a case cited in the Employer’s Brief:

In applying the two new criteria, it is emphasized that the specified limitations on expenditures or revenues must be present to trigger the application of the “greatest weight” criterion, but the “greater weight” criterion does not require such limitations and it can apparently be applied in at least two ways: first, by ensuring that an employer’s economic conditions are fully considered in the composition of the primary intraindustry comparables; and, second, by ensuring that the economic costs of a settlement are fully considered in relationship to the “...economic conditions in the jurisdiction of the municipal employer. In other words, like employers should be compared to like employers, and undue and disparate economic burdens should not be placed upon an employer without appropriate statutory consideration of comparable economic conditions. Rusk County (Highway), Dec. No. N/P, (10/17/98).

With respect to limitations on expenditures or revenues (the greatest weight criteria), this factor is not present and not “triggered” in this case because the District has not pointed to any specific limitation that the Association’s offer would cause them to exceed. Their arguments in this regard are the most general of generalizations. Certainly, the Association’s offer will require more money than the District’s offer, but this doesn’t mean it causes the District to exceed revenue or expenditure limitations. Without specifics this criteria as suggested by Arbitrator Petrie is not applicable in this case.

As for the “greater weight” criteria, Arbitrator Petrie seems to suggest this factor can be applied by carefully choosing comparisons to other employers on the basis of their relative economic conditions. Certainly this is true since jurisdictions, if shown to have the same, similar or comparable economic conditions, can be expected to provide similar compensation to employees. However, since such comparisons were already a factor at the time the “greater weight” criteria was added, it seems something more was intended.

In this case, there is no economic evidence that truly distinguishes the Wittenberg-Birnamwood School District from other school districts in the Employer’s comparable pool. There are some meaningful differences between Wittenberg-Birnamwood and D.C. Everest and Mosinee with respect to their economic bases. For this reason, as well as traditional comparable considerations, they will not be used. To the extent that the greater weight criteria requires more than (1) full consideration of economic conditions in the composition of intraindustry comparables and (2) that “like employers should be compared to like employers,” it can be said that the Arbitrator is unimpressed that there are any special independent economic factors evidenced in the Wittenberg-Birnamwood

District that merit favoring one offer over the other. The general kinds of data on record do not warrant special attention for this District. Yes, the number of farms is down statewide, and other farm costs have risen. However, milk prices are up, according to the economic data. Unemployment is also down in Shawano County, while the work force has grown. The Employer did stress that the economic factors do not support the adoption of the special health insurance benefit at the tune of \$60,000. However, this ignores the fact this is not a new benefit. It is a benefit the District has agreed to for several years and its continuation will not result in a new or additional cost. The economic news is mixed, at worse, and more importantly nothing seems to distinguish Wittenberg-Birnamwood from the rest of the region in relative terms as economically distressed or particularly robust. This factor on the evidence of this record favors neither offer.

Racine School District (Nurses in Teacher unit), Dec. No. 29597-A (Grenig, 12-28-99) (Employer):

FACTORS GIVEN GREATEST WEIGHT AND GREATER WEIGHT Although the District suggests it might have to reduce the budget or might even run deficits, it does not point out the concrete steps it would actually have to take should the Association's offer be selected. It is not possible to speculate as to the District's likely budgetary action in the future. See *Oregon Sch. Dist. (Educational Assistants)*, Dec. No. 28724-A (Levine 1997). The record fails to demonstrate that implementation of either final offer will require the District to eliminate student services or activities or programs. Additionally, nothing in the record establishes that selection of either final offer will force the District to raise revenues above those permitted by law or to exceed statutory spending limitations. Cf. *Black River Falls School Dist.*, Dec. No. 29002-A (Vernon 1997). However, a low fund balance in and of itself to defeat selection of a party's more costly final offer in an interest arbitration proceeding. The District must show an actual connection between the two. See *Oregon School District (Educational Assistants)*, Dec. No. 287424-A (Levine 1997) (district may have strong point in claiming that budget fund balances are already below safety margin, but it fails to explain how it applies to the instant case). It is not appropriate to base a decision here on speculation as to what the fund balance may be in years beyond the term of the agreement at issue here. *Madison Metropolitan School Dist.*, AAA Case 51 390 00496-95-S (Nathan 1996).

Because of the minimal difference between the cost of the parties' final offers, there appears to be no sufficient difference to justify significant weight being placed upon either the greatest weight or the greater weight criterion. See *Waupaca County (High Unit)*, Dec. No. 28850-A (Petrie 1997). Because of the small number of employees in this dispute, acceptance of either offer would not result in a budget increase that would threaten the District's budget fund balance so adversely that other deserving areas of the budget will have to be unduly cut back or sacrificed. *Oregon School Dist.*, Dec. No. 28724-A (Levine 1997). Where, as here, the tax base is expanding, per capita income looks good, and the property tax levy rank is among the lowest, arbitrators have afforded the greater weight under the greater weight criterion to favor the union's final offer.

Columbia County (Courthouse and Human Services), Dec. No. 28997-A (Tyson 1997).

Sauk County (Highway), Dec. No. 29560-A (Boyer, 8-10-99 award; 9-15-99 clarification) (Employer):

. . . the Arbitrator acknowledges the nature of the local economy is changing, and the County is impacted "by forces" from both the nearby Columbia and more distant Dane Counties, and both positions rely to some extent upon conjecture. Nevertheless, the Arbitrator is compelled to conclude that while Sauk County is apparently more economically stable than Columbia, such shall not justify the disproportionate wage increase proposed by the Union. Clearly, Columbia County is a significant comparable, but it is not the only external comparable that must be considered, and any such external comparables must also be assessed relative to the internal comparisons addressed above and non-specified other local factors to accurately consider the statutory criterion of local economic conditions cited as the "Factor Given Greater Weight" in the statute.

---end---

HISTORICAL TENDENCIES OF WISCONSIN INTEREST ARBITRATORS

Wisconsin interest arbitrators have tended to:

seldom give controlling weight to inability to pay. Inability to pay, if proven, will control the outcome of the case, but it is difficult to prove and seldom found to have been proven.

give little weight to the cost of living factor, viewing comparable settlements as a guide to the appropriate economic response to the cost of living.

maintain historical relationships, patterns and negotiated outcomes. The party proposing a change is usually required to prove that a change is needed, that the change proposed addresses the need without creating other problems in the process, and that an appropriate trade-off or quid pro quo is being offered in exchange for the change.

not deviate from previously established external comparability groups absent a very strong showing that conditions have changed so that the established comparables group is no longer appropriate.

give substantial weight to internal comparables regarding fringe benefits

prefer to maintain historical ranking among external comparables. A top ranking, alone, will not justify a lesser economic settlement than comparable groups are receiving; a bottom ranking alone will not justify a greater economic settlement than comparable groups are receiving.

seldom give controlling weight to private sector comparisons, primarily because private sector economic data is not as available as public sector wage and benefit data.

give substantial weight to overall compensation comparisons, but many parties find it difficult to gather and appropriately compare all pertinent aspects of total compensation.

view their role as selecting the offer that is more likely to have been reached had the parties been able to reach a voluntary agreement

be precluded from allowing a party to change its final offer unless the other party agrees to allow such a change to be made.

be required to select one of the final offers entirely, rather than compromising

be precluded from requiring the parties to discuss settlement if either party prefers not to engage in such discussions

issue a consent award where bargaining teams agree on terms for arbitrator to award, avoiding the need for union ratification in some circumstances

Wisconsin Employment Relations Commission

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2000-2001 PUBLICATIONS CATALOG

Since 7-1-99, WERC decisions, grievance awards and interest awards have been offered in a combination of CD-ROM, internet and e-mail publications, as more fully detailed in the text and table, below. **Please review this catalog and then use the attached order form to place your order.** WERC is now accepting orders for the following CD-ROM products:

- **WERC 1989-98 Decisions/Grievance Awards Archive CD-ROM** (released May, 1999) consisting of WERC and court decisions and grievance awards by WERC-employed arbitrators in the municipal, state and private sectors from July 1989 through December 1998, in Word 97, RTF and WP 5.1 for DOS formats, with case lists (hyperlinked in RTF and Word 97), but without search software. Priced at [\$150.00] if the customer has not previously purchased a full diskette set of decisions/grievance awards issued since July 1989. Priced at [\$50.00] if the customer has previously purchased a full diskette set of decisions/grievance awards issued since July 1989.
- **WERC Interest Award Archive CD-ROM Multi-Disk Set** (released 1999) consisting

of municipal sector interest arbitration awards issued prior to 1999 (police-fire since 1971; general employee since 1978; including voluntary impasse procedure awards submitted to WERC; but not including consent awards). Produced in searchable indexed PDF image+hidden text format with case lists and Acrobat Search software. This CD-ROM set will also include a separately searchable index of WERC interest award summaries covering July 1986 through June, 1994. [\$200.00]

- **WERC January 2000 Update CD-ROM** (released May 2000) and consisting of three parts. First, calendar 1999 updates of the decisions, grievance awards and interests awards collections on all of the archive CD-ROMs above, in the various respective formats noted. Second, a set of WERC and court decisions and grievance awards by WERC-employed arbitrators in the municipal, state and private sectors from July 1989 through December 1999, in searchable indexed PDF normal format with included Acrobat Search software. Third, a set of all WERC-published decisions digests in the municipal, state and private sectors in searchable indexed PDF normal format. And fourth, a copy of WERC website pages as they appeared in March of 2000. Priced at [\$150.00] if the customer has not previously purchased a full diskette or CD-ROM set of decisions/grievance awards issued since July 1989. Priced at [\$50.00] if the customer has previously purchased a full diskette set or CD-ROM of decisions/grievance awards issued since July 1989.
- **WERC January 2001 Update CD-ROM** (to be released in early 2001) and consisting of three parts. First, calendar 2000 updates of the decisions, grievance awards and interests awards collections on all of the archive CD-ROMs above, in the various respective formats noted. Second, a set of WERC and court decisions and grievance awards by WERC-employed arbitrators in the municipal, state and private sectors from July 1989 through December 2000, in searchable indexed PDF normal format with included Acrobat Search software. Third, a set of all WERC-published decisions digests in the municipal, state and private sectors in searchable indexed PDF normal format. and fourth, a copy of WERC website pages as they appear in early 2001. Priced at [\$150.00] if the customer has not previously purchased a full diskette or CD-ROM set of decisions/grievance awards issued since July 1989. Priced at [\$50.00] if the customer has previously purchased a full diskette set or CD-ROM of decisions/grievance awards issued since July 1989.

At all times before during and after its anticipated annual issuance of CD-ROM updates, WERC will continue to post on at least a monthly basis its **decisions and grievance awards on the State Bar's WisBar** website where they are conveniently listed in various indexes and searchable on-line. In addition, beginning as soon as possible, WERC also plans to post **interest awards (other than consent awards) issued since 1-1-99 on the WERC website** on at least a monthly basis, in either PDF normal or PDF image+hidden text format.

In addition, WERC also offers a **subscription service consisting of monthly updates via e-mail, consisting of decisions, grievance awards and interest awards**. At the end of each month, the decisions and grievance awards issued and the interest awards received either in diskette form from interest arbitrators or following scanning and recognition processing, will be forwarded to subscribers via e-mail. Decisions and grievance awards will be available in Word

97 and WordPerfect 5.1 for DOS formats, and interest awards will be in either PDF normal or PDF image+hidden text format, but without the sort of Acrobat indexing necessary to permit them to be searched with Acrobat Search software. The 2000-01 annual subscription price for this new monthly e-mail service is \$50.00.

The following table lays out forms in which various WERC documents and databases are available. References in the table to WisBar Internet are to the WERC databases on the State Bar of Wisconsin's WisBar website (<http://www.wisbar.org/werc/>). References to WERC Internet are to the WERC's website located at (<http://badger.state.wi.us/agencies/werc/index.htm>). Both the WERC website and the WERC databases on the WisBar website are accessible to all internet users free of special charges, administrative requirements and advertising.

Document(s)	Paper Availability	CD-ROM Availability	Internet Availability	E-mail Availability
WERC and court decisions and grievance awards by WERC-employed arbitrators (municipal, state and private) issued prior to 7-1-89	Paper subscriptions are discontinued. Copies of individual documents are available via mail or fax *	none	none	none
decisions and grievance awards 7-1-89 -- 12-31-98	Paper subscriptions are discontinued. Copies of individual documents are available via mail or fax *	Included on the 1989-98 Decisions/Grievance Awards Archive CD-ROM described above. Also to be included on the annual Update CD-ROMs described above.	WisBar Internet (searchable in HTML, downloadable in HTML and word processing formats)	none
decisions and grievance awards 1-1-99 and after	Paper subscriptions are discontinued. Copies of individual documents are available via mail or fax *	Included on the annual WERC Update CD-ROMs described above.	WisBar Internet (posted at least monthly) (searchable in HTML, downloadable in HTML and word processing formats)	Monthly E-Mail Updates Subscription described above.

municipal sector interest arbitration awards prior to 1-1-99 (police-fire since 1971; general employe since 1978; including voluntary impasse procedure awards)	Paper subscriptions are discontinued. Copies of individual documents are available via mail or fax *	Included on the WERC Interest Award Archive CD-ROM Multi-disk Set described above.	none	none
interest arbitration awards (police-fire and non-police-fire) 1-1-99 and after	Paper subscriptions are discontinued. Copies of individual documents are available via mail or fax *	Included on the annual WERC Update CD-ROMs described above.	WERC Internet (viewable, downloadable in a PDF format, with case list) (consent awards not included)	Monthly E-Mail Updates Subscription described above.
WERC-published digests of WERC and court decisions: <u>A. MUNICIPAL</u> Volume I (2/2/62 -- 11/10/71) Volume II - (11/11/71 -- 12/31/74)** <u>B. PRIVATE</u> Volume I (5/12/39 -- 12/31/65) Volume II - (1/1/66 - - 12/31/68) Volume III (1/1/69 - - 12/21/72) Volume IV (1/1/73 - - 12/31/73) Volume V (1/1/74 --	[\$5.00] per volume	Included on annual WERC Update CD-ROMs described above.	WERC Internet (currently viewable in HTML, downloadable in HTML or RTF; in late 1999 to be viewable and downloadable in PDF normal format, as well.)	none

12/31/76) Volume VI (1/1/77 - - 12/31/81) Volume VII Revised - (1/1/82 -- 12/31/88) C. <u>STATE</u> Consolidated Volume (1/1/67 -- 12/31/75)**				
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collective bargaining statutes administered by the WERC (booklet)	[\$7.00]	none ***	WERC Internet (viewable and downloadable in PDF format)	none
latest WERC biennial report	[\$5.00]	none	WERC Internet (case statistics only, in HTML format)	none
elections procedure manual	[\$5.00]	none	WERC Internet (viewable in HTML; downloadable in HTML and RTF)	none
digest and report of interest arbitration awards covering: 7/86 -- 6/87 7/87 -- 6/88 7/88 -- 6/89 7/89 -- 6/90 7/90 -- 6/91 7/91 -- 6/92 7/92 -- 7/93	 [\$8.00] [\$8.00] [\$8.00] [\$8.00] [\$8.00] [\$8.00] [\$8.00]	Award summaries only to be included on the Interest Awards Archive CD-ROM Multi- disk Set, described above.	WERC Internet (award summaries only; viewable in HTML; downloadable in HTML and RTF)	none

7/93 -- 6/94	[\$8.00]			
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*Prices for paper copies of individual decisions/awards are as follows:

-If pre-printed: 1.50 per document, plus tax and postage (more for extremely long documents)

-If photocopied: \$.10 per page, plus tax and postage

-If faxed: add \$5.00 per document, plus tax.

** Municipal and State sector decisions digests covering periods subsequent to those covered by WERC-published digests are available in paper and CD-ROM forms from the Wisconsin Association of School Boards in Madison.

*** Wisconsin Statutes are available in paper, CD-ROM and internet forms from the State of Wisconsin Revisor of Statutes in Madison.



Wisconsin Employment Relations Commission

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This website is intended to provide information about, and easy access to the WERC and its personnel and services. Links to the major site content categories appear at the top and bottom of this page and the bottom of most other pages, and a more detailed contents list appears below. [Downloadable documents](#) are either self-extracting executable compressed files in the Rich Text Format (RTF) or Adobe Portable Document Format (PDF) files. **[Interest arbitration awards issued since January of 1999 are now accessible on this site.](#)** Please also try the links to searchable databases of WERC [decisions](#) and [grievance awards](#) on the State Bar of Wisconsin's WisBar website. We hope you find our site useful, and we invite your [comments, questions and suggestions](#) about it.

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